

The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

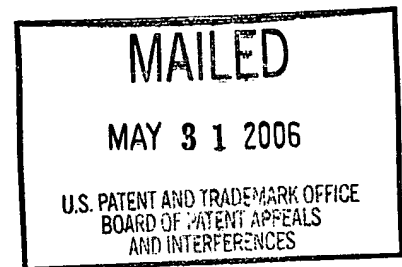
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex Parte JOEL D. PESHKIN, PAUL WREN, and MICHAEL WHITFIELD

Appeal No. 2006-1767
Application No. 09/264,065

ON BRIEF



Before KRASS, BARRY and MACDONALD, Administrative Patent Judges.

KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1 and 4-54. The final rejection of claim 55 was withdrawn by the examiner in the answer and is no longer before us on appeal.

The invention pertains to computer communication systems. The prior art method of command mode detection of modems for switching to command mode and processing mode commands, deemed by appellants to be undesirable, is improved upon by the instant invention wherein modem commands can be processed without a need to detect special sequences for switching from data mode to command mode.

Representative independent claim 1 is reproduced as follows:

1. A modem comprising at least one physical channel for transmitting data from a source to a receiver, said physical channel having a first logical channel and a second logical channel, wherein:

said first logical channel is configured to transmit only command information from the source to the modem for controlling telephone line operations of the modem, said first logical channel being defined by a command type in said command information, wherein said command information for controlling telephone line operations of the modem includes a command to call a telephone number or a command to answer an incoming call; and

said second logical channel is configured to transmit data information from the source to the receiver through the modem, said second logical channel being defined by a data type in said data information

The examiner relies on the following references:

Noyes	4,656,318	Apr. 07, 1987
Johnson et al. (Johnson)	5,001,703	Mar. 19, 1991
Lumpkin et al. (Lumpkin)	5,943,505	Aug. 24, 1999 (filed Apr. 11, 1997)

Claims 1 and 4-54 stand rejected under 35 U.S.C. §103. As evidence of obviousness, the examiner offers Lumpkin and Noyes with regard to claims 1 and 4-53, adding Johnson with regard to claim 54.

Reference is made to the briefs and answer for the respective positions of appellants and the examiner.

OPINION

With regard to claims 1 and 4, the examiner explains, at pages 4-5 of the answer, that Lumpkin discloses the claimed subject matter but for the command information including commands to call a telephone number or a command to answer an incoming call. The examiner turns to Noyes for a teaching of a modem for transmitting data or command information, concluding that it would have been obvious “to utilize the commands of Noyes to establish or terminate a connection between modems in the system disclosed by Lumpkin. The ability to detect an incoming call is a vital link in providing electronic mail and remote database accessing functions (column 1, lines 21-28)” (answer-page 5).

We have reviewed the evidence before us including, inter alia, the disclosures of the applied references and the arguments of appellants and the examiner and we conclude from such a review that the examiner has not established a prima facie case of obviousness with regard to the instant claimed subject matter, or, if such a prima facie case has been established, it has been effectively rebutted by appellants’ arguments.

Each of the independent claims 1, 4, 20, 31, and 42 requires, in one form or another, the transmission of command information “for controlling telephone line operations of the modem” including a command to “call a telephone number or a command to answer an incoming call.”

The examiner’s position is that these claimed features are taught by Lumpkin at column 7, lines 49, through column 8, line 16. The examiner asserts that Lumpkin discloses transfer of data from the DTE 200 through the data communications device 201 and to the

network 104, wherein commands are generated such as acknowledgements and interrupts to allow data transmission to the network to commence. According to the examiner, such data will be transferred through registers and then will be transmitted over the network. The examiner concludes, from the penultimate line of page 4 to the first line of page 5 of the answer, “[t]herefore, the command information controls the data transmitted or received over the telephone lines connecting the modem and the network. This is the ‘controlling telephone line operations of the modem’ or the data pump.”

Assuming all the examiner has said to be true, the examiner’s analysis is faulty in at least one regard. At best, the examiner has shown that Lumpkin’s command controls the data transmitted or received over the telephone lines. However, as convincingly pointed out by appellants, at page 3 of the reply brief, for example, the instant claims require the command information to control the “telephone line operations.”

Lumpkin discloses nothing that would indicate the control of telephone line operations, but only commands for controlling the DMA interface (see column 8, line 64 through column 9, line 36, of Lumpkin). Therefore, the examiner has not provided a teaching of the transmission of command information “for controlling telephone line operations of the modem” including a command to “call a telephone number or a command to answer an incoming call.”

It is true that the examiner relies on Noyes for the knowledge of using a command to call a telephone number or receive an incoming call. However, appellants acknowledge that a command to call a telephone number or a command to answer an incoming call is not new

(e.g., see page 13 of the principal brief). The point here is not that such a command is new. Rather, there is nothing in either Lumpkin or Noyes that suggests the transmission of command information “for controlling telephone line operations of the modem.” If there was some teaching of such a control of telephone line operations of the modem, perhaps the examiner could then assert the obviousness of that command to “call a telephone number or a command to answer an incoming call.”

But since Lumpkin does not disclose or suggest the transmission of command information “for controlling telephone line operations of the modem,” and Noyes does not provide for this deficiency, even if Noyes does suggest a command to “call a telephone number or a command to answer an incoming call,” no prima facie case of obviousness is shown. We note that Johnson also does not provide for the noted deficiency.

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Accordingly, the examiner's decision rejecting claims 1 and 4-54 under 35 U.S.C.

§ 103 is reversed.

REVERSED

Enola Krass

ERROL A. KRASS

Administrative Patent Judge

~~LANCE LEONARD BARRY~~

~~Administrative Patent Judge~~

ALLEN R. MACDONALD

Administrative Patent Judge

BOARD OF PATENT APPEALS AND INTERFERENCES

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